C.S. 1062

(4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION No. 2136 /2004

PETITIONER Suresh Kumar Agrawal,
Aged about 36 years,
S/o Late Shri Shankarlal Agrawal,
R/o Tahsil Lormi, Distt. Bilaspur

VERSUS

RESPONDENTS

1. The State of Chhattisgarh,
Through Secretary,
Panchayat and Rural Department,
D.K.S. Bhawan, Raipur

2. The Collector,
Bilaspur.

3. Shri Arjun Singh Sisodiya,
Tahsildar, Bilha Camp Lormi,
Distt. Bilaspur

P. R. No. 2063/04
Presented by Shri Pankaj Kaledhar
dated 14-7-04

WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA

(86)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.2136 OF 2004

Suresh Kumar Agrawal

- Versus -

State of Chhattisgarh and others

POST FOR ORDER ON 18TH AUGUST, 2004

Sd/-
L.C.BHADOO
Judge
17.8.

(87)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.2136 OF 2004

Suresh Kumar Agrawal

- Versus -

State of Chhattisgarh and others

Present: -

Mr. P. Diwakar, Advocate with Mr. Anant Bajpai and Mr. Parag Kotecha, Advocates: For the petitioner.

Mr. Prashant Mishra, Additional Advocate General: For the State/respondents No.1 and 2.

O R D E R

(Passed on 18th August, 2004)

L.C. BHADOO, J

1. The petitioner by way of this writ petition has challenged the propriety of the decision of respondents No.1 and 2 in appointing respondent No.3 as member and Chairman of the fact finding committee constituted to find out the persons responsible for the scam of using forged coupons and thereby siphoning off huge quantity of rice from the stores of Janpad Panchayat, Lormi, including Sewa Sahakari Samiti Maryadit Upsamiti, Dholgi and Seva Sahakari Samiti Maryadit Upsamiti, Lachhanpur.

2. The case of the petitioner is that he is resident of Village: Lormi and owner of Jindal Fuel petrol pump. As per the Government's decision taken in the year 2001, for carrying out various works in the rural areas, a scheme commonly known as "Food for Work", was introduced by the State Government vide letter dated 1.2.2001 and as per the scheme, it was directed that for the work executed the labourers will be paid 75% of their wages in the form of rice and remaining 25% will be paid in cash. Same was the practice for the contractors who used to supply material in the work and they were also paid in the form of coupons and cash as per the above scheme. In respect of various works executed during the period 2002-2003, a question was raised in the Assembly by one of the MLAs of the opposition party regarding use of forged

coupons in Janpad Panchayat, Lormi area and based on that, an enquiry was ordered by the Sub Divisional Officer. Vide letter-dated 24.6.2003 the Tehsildar was asked to enquire into the matter and thereby Tehsildar, Lormi appointed two persons to enquire into the matter and after enquiry it was submitted that no forged coupons were used. However, thereafter, the Government constituted a committee consisting of following members: -

i. Arjun Singh Sisodiya, Tehsildar;
ii. A.R. Kashyap, Additional Chief Executive Officer;
iii. D.P. Sharma, Assistant Food Inspector; and
iv. M.P. Shrivas, Auditor,

to enquire into the allegations regarding the use of fake and forged coupons in Janpad Panchayat, Lormi area. Thereafter, two more members namely, R.P. Verma and M.P. Tamrakar, both Auditors, were also included as members in the said committee.

3. It is the further case of the petitioner that respondent No.3 i.e. Arjun Singh Sisodiya, Tehsildar had worked as Chief Executive Officer, Lormi from 26.11.2002 to 12.1.2003 and during that period he had issued many work orders (Annexures P-1 to P-6) in Janpad Panchayat, Lormi, and he had also issued rice coupons, therefore, it was not appropriate for the State Government to appoint him as a member of the fact-finding committee. A person who had worked as Chief Executive Officer cannot be asked to enquire into the allegations in which chances of involving him cannot be ruled out. Therefore, a person cannot enquire into in his own cause. Ultimately, it is prayed to expel respondent No.3 from the enquiry committee, to direct respondents No.1 and 2 to appoint any committee headed by a judicial member, and if any report is filed by respondent No.3 same may be quashed.

4. Return has been filed on behalf of the State/respondents No.1 and 2 in which it has been mentioned that the said enquiry was initiated by the State Government in pursuance of a question raised in the Assembly by Mr. Dharamjeet Singh, MLA. The said committee is in the nature of administrative committee and it is not a statutory enquiry, therefore, the instant petition seeking quashment of enquiry proceedings is not maintainable. The petitioner had also participated in the enquiry, submitted his reply and

had also deposed before the Four Member Enquiry Committee, therefore, now he cannot challenge the constitution of the enquiry committee. It has further been mentioned that respondent No.3 was not a regular Chief Executive Officer of Janpad Panchayat, Lormi. In fact Mrs. Tirkey was the regular Chief Executive Officer and as she was on leave from 26.11.2002 to 12.1.2003, therefore, respondent No.3 was handed over the charge of the Chief Executive Officer, Janpad Panchayat, Lormi, on officiating basis in addition to his normal duties. It has further been mentioned that it is denied that respondent No.3 had issued any coupon for being distributed/disbursed by the authorized officer to labourers. Respondent No.3 was not involved in any kind of illegality or irregularity, therefore, there is no question of his becoming judge in his own cause. The brother of the petitioner namely, Pawan Kumar Agrawal is the Chairman of Janpad Panchayat, Lormi, and both the brothers are involved in large scale of scam.

5. It has further been mentioned in the return that as per the scheme, it was decided that 76% of the labour charges will be paid in the form of rice and remaining 24% in the form of cash. As per the scheme, the coupons are to be allotted by two authorities namely, the Collector (Relief Works) and Jila Panchayat (DRDA). After allotment of these coupons to each of the Janpad Panchayats, the Chief Executive Officer is required to disburse the coupons to the labourers either by himself or by authorizing the officer concerned under whose supervision the related work was performed and executed. Respondent No.3 was appointed the member of committee as per the name suggested by the MLA who raised the question in the Assembly. It has been specifically denied that respondent No.3 had ever issued coupons during his tenure as officiating Chief Executive Officer. He never deputed any officer to put signature on the coupons on his behalf or he had never signed on any coupon during his tenure as Chief Executive Officer and the coupons were never issued by him either personally or after allotment to the authorized officer. The coupons, which were distributed during his period, were allotted to the concerned officer by the previous Chief Executive Officer. In fact, respondent No.3 had never received any allotment of coupons either from the Collector or Jila Panchayat.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the petitioner argued that in this enquiry principles of natural justice have been violated for the reason that respondent No.3 had worked as the Chief Executive Officer of Janpad Panchayat, Lormi, therefore, he could not have been appointed as member of the committee and thereby, the right of the petitioner has been prejudiced. Further, respondent No.3 was appointed as member of the committee on the suggestion of the MLA who raised question in the Assembly regarding the scam, which is also violative of the principles of natural justice. In support of his arguments, he relied upon a judgment of the Hon'ble Apex Court in the matter of **Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others** reported in **AIR 1993 Supreme Court 2155.**

8. On the other hand, learned Additional Advocate General submitted that respondent No.3 had never been the regular Chief Executive Officer of Janpad Panchayat, Lormi, and he had never distributed any coupons under his signature or under his orders. He further submitted that report has already been submitted and it was a fact finding administrative enquiry, therefore, no principle of natural justice has been violated. He further submitted that since the question was raised by an opposition MLA regarding the scam, therefore, the Government thought it proper to include one member in the said fact finding committee as suggested by the MLA in order to have fair enquiry so that he should not doubt that the members of the committee nominated by the Government have covered the scam.

9. Having heard the learned counsel for the parties, I have perused the pleadings and other orders. As far as the question of appointment of respondent No.3 as one of the members of the fact finding committee is concerned, I am of the considered opinion that in this case principles of natural justice have not been violated, because it is an admitted position that respondent No.3 had never worked as a regular Chief Executive Officer of Janpad Panchayat, Lormi, as Mrs. Tirkey was the regular Chief Executive Officer and when she was on leave during the period from 26.11.2002 to 12.1.2003, therefore, about one and half months respondent No.3 worked as

temporary Chief Executive Officer in addition to his own duties. It has been specifically denied by the State that even during that period no coupons were issued under his signature. The period of scam for which enquiry was instituted was for the years 2002 & 2003 i.e. almost for two years when Mrs. Tirkey was the regular Chief Executive Officer. As such, the ground taken by the petitioner is not valid. Moreover, respondent No.3 was not the only whole and sole member of the committee who could have taken the decision bypassing the other members of the committee. Apart from respondent No.3, there were other five members of the committee and particularly three of them were Auditors. Therefore, on this ground also it cannot be said that the report of committee was in any manner influenced by the presence of respondent No.3. In view of the above facts, the judgment cited by the learned counsel for the petitioner is of no help to the petitioner.

10. Now, coming to the question that the name of respondent No.3 was suggested by the Member of Legislative Assembly who raised question in the Assembly, on this ground also I do not find any illegality in the constitution of the committee for the same reason that there were as many as six members of the committee, if one of the members i.e. respondent No.3 was included as member of the committee on the suggestion of the MLA who raised question in the Assembly about the scam, it cannot be termed that a proper committee was not constituted. In my opinion, appointing respondent No.3 as member of the committee on the suggestion of the MLA concerned, this decision was also just and fair for the reason that concerned MLA should not have any doubt that the constitution of committee was not fair.

11. As has been mentioned above, there were as many as six members in the committee, therefore, there was no reason for any of the persons to be influenced by one or the other more members. Moreover, there are no allegations in the petition that the other members were influenced by the presence of respondent No.3 and they conducted the enquiry and submitted report as per the dictates of respondent No.3. As has been argued by the learned Additional Advocate General appearing on behalf of the State/ respondents No.1 and 2 that the committee has already submitted its report before filing of this writ petition, therefore, question does not arise of

quashing the report unless and until it is established by the petitioner that the enquiry committee in any manner conducted the enquiry in a most illegal and irregular manner by violating the settled principles of law. Apart from that this was merely a fact finding administrative committee in which the petitioner himself had appeared in response to the show cause notice, he had examined himself before the committee, took part in the committee proceedings and he has not been able to point out any illegality or irregularity committed by the committee while conducting enquiry into the scam.

12. Therefore, in the given situation, I am of the opinion that the petitioner has not been able to point out or establish any ground for quashment of the report of the committee on any of the grounds. As such, the writ petition is liable to be dismissed and the same is dismissed at the admission stage itself.

Sd/-
L.C.BHADOO
Judge

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